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IN THE

Supreme Court of the United States

October Term, 1964

No. 171

In the Matter of the
Application of the Village of Port Chester,
Petitioner,

To Review a Determination of
M. P. Catherwood, Industrial Commissioner as to
Prevailing Wages of Certain Employees of the
Village of Port Chester,
Respondent,

Martin Bucci, Joseph J. Giarardi, *et al.*,
Intervenors-Respondents.

REPLY BRIEF FOR PETITIONER, VILLAGE OF PORT CHESTER

The briefs in opposition can be shortly answered.

(1) While it is true that, as a general rule a State may, without regard to ordinary constitutional restrictions applicable in the case of individuals, alter or repeal the charter or governing statutes of any of its municipal subdivisions, the instant issues present no such case.

Here the violations of constitutional rights were in the course of a quasi-judicial and subsequent judicial proceeding, wherein the Village was entitled, like any other litigant, to those elementary principles of fair play and justice which are the essence of due process of law.

The Village is not contending that Section 220 of the New York Labor Law, or any subdivision of it, is unconstitutional. It is contending that in the application of it and in the quasi-judicial proceeding which the Hearing Officer and the Commissioner conducted under it, they violated the constitutional rights of the Village as a defendant and litigant and that their violations equally vitiated the judicial action of the Appellate Division in affirming.

(2) The claim that the constitutional issue was not properly raised below is given color only by ignoring what was actually done.

The petition herein has quoted (pp. 16-20) many specific and extended references to the constitutional issues in the proceedings and hearings before the Hearing Officer, before the Commissioner and before the courts. It also has quoted explicit statements by the Hearing Officer, the Commissioner and the claimants' attorney acknowledging such issues, discussing them, and, in the case of the Hearing Officer and the Commissioner, expressly overruling them.

The petition of the Village for the judicial review which Section 220(8) specifically provided expressly tendered the constitutional issue for decision (18); and this express tender necessarily held good for the Appellate Division and the Court of Appeals.

The Attorney General's brief states that, in seeking leave to appeal to the Court of Appeals, the petitioner "did not go beyond" the one reference to constitutional requirement which it quotes. The Attorney General is wholly mistaken. The denial of due process of law was expressly and explicitly presented as a determining issue on pages 16, 17, 28, 34-5, 36, 38, 40 of the Village's moving papers in the Court of Appeals. As an example of these numerous specifications, over and above the single quotation which the Attorney General acknowledges, we quote a typical specification from page 16:

> "The Commissioner's basic error in interpreting the time limitation in Section 220(7) as operative only as ground for a judicial direction in an Article 78 proceeding, was compounded by his applications of it and by *the consequent denial of due process of law,* with results disastrous to the Village. (Page 28, *post.*)" (Emphasis ours.)

Indeed, this quotation appeared twice,—once in the Index and again as the heading to Point III (p. 28).

One more illustration should suffice,—this from pages 34 and 35 of the Village's moving papers in the State Court of Appeals:

> "In emphasizing this demand (for a bill of particulars) Mr. Schmidt later stressed that a complaint once filed would not and could not run 'forever afterwards', particularly with no particulars of what are the liabilities claimed; and that his right to such a bill of particulars, if Section 220 were to be interpreted as open-end authority for indefinite years, *'is the very essence of due process in a hearing'* (235)." (Emphasis ours.)

(3) The intervenors' brief states (p. 2):

> "There is no requirement that service of such a claim be also made on the Village."

The brief is wholly mistaken. Section 220(8) of the New York Labor Law specifically requires that "before proceeding under a complaint" the Industrial Commissioner "shall give notice" of a hearing, "together with a copy of such complaint", "which notice shall be served personally or by mail on any person or corporation affected thereby".

In the present instance, the Village was the "corporation affected thereby", for a judgment against it was the objective of the claimants and was expressly provided for in Section 220(8).

(4) The intervenors' brief also claims (pp. 2, 3) that the inordinate delay of the Industrial Commissioner for thirteen years beyond the statutory limit of six months was attributable to the Village.

Such claim is also wholly mistaken. See the narrative on pages 14 and 15 of the instant petition and the subsequent Points therein.

In his report dated October 3, 1963, the Hearing Officer conceded that throughout the claims had been "contentiously resisted" (46).

During 1955 and 1956 the claimants themselves made *five written demands* upon the Commissioner to start hearings (428, 429, 431, 434, 438), and they made one more in

1958 (449), and still another in 1959 (451). All were in vain.

In April 1956 the Village sent to the attorney for the claimants (13-15) a letter expressly stating that upon the basis of the opinion and reasoning of its attorney Mr. Godfrey P. Schmidt, the Village does "hereby reject all claims made by and on behalf of the 56" claimants, and is "unwilling * * * to enter into any arrangement for a compromise settlement of any of the claims listed in the enclosed schedule" (14). That schedule appears as Exhibit A annexed to the petition (31-34).

Indeed, even earlier, on September 28, 1955, the attorney for the claimants had himself sent to the Industrial Commissioner and to the Corporation Counsel of the Village a letter stating *inter alia* (428):

> "Please be advised that our efforts to compromise the prevailing wage claims have been unsuccessful. * * * it must now be resolved that such cannot be accomplished.
>
> Accordingly may I ask that you process these claims to a hearing before the Industrial Commissioner."

At no time from the first hearing on December 19, 1956 (84), until the last on March 6, 1963, did Mr. Godfrey Schmidt, attorney for the Village, mention settlement. On the contrary, he strenuously and continuously argued that, because of the delays in setting hearings, the Commissioner had lost jurisdiction, the claims had lost validity and that the procedure being employed was not consonant with due process of law. Mr. Schmidt also stressed by oral

argument and brief that the Commissioner's non-compliance with the claimants' aforesaid written demands for hearings was the equivalent of a determination or refusal within the meaning of Section 220(8), and that the failure of the claimants to seek judicial review of it within the statutory thirty days was a final termination of the proceeding and the claims.

There is not a particle of evidence that there was at any time "a serious and protracted attempt to settle". The letters referred to were, on their face, mere desultory references which never approached anything concrete or active negotiation. To claim that they caused delay for over thirteen years is wholly fantastic.

But Section 220 of the Labor Law renders all such excuses irrelevant. The statute made it the duty of the Commissioner to proceed "expeditiously" in the public interest. It left no room for procrastination or shunting of responsibility to others.

Respectfully submitted,

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Respondent,

MARTIN BUCCI, JOSEPH J. GIARARDI, *et al.*,

Intervenors-Respondents.

INTERVENORS-RESPONDENTS' REPLY BRIEF

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MEMBER OF TYPOGRAPHICAL UNION No. 6

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1198

In the Matter of the Application

of

THE VILLAGE OF PORT CHESTER,

Petitioner,

To Review a Determination of

M. P. CATHERWOOD, Industrial Commissioner as to Prevailing Wages of Certain Employees of the VILLAGE OF PORT CHESTER,

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MARTIN BUCCI, JOSEPH J. GIARARDI, *et al.*,

Intervenors-Respondents.

INTERVENORS-RESPONDENTS' REPLY BRIEF

Introduction

It is recognized that it is unusual to file a Respondents' reply brief but Petitioner's purposeful, partial quotation of a pertinent statute could cause the Court to be misled.

The incorrect quotation was not made in petitioner's original brief and thus it could not be caught and answered before. Thus this reply brief is necessary.